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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,118	09/25/2001	Eugene David Rodgers	9080/23611	9968

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EXAMINER

COLE, ELIZABETH M

ART UNIT PAPER NUMBER

1771

DATE MAILED: 04/11/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/964,118

Applicant(s)

RODGERS, EUGENE DAVID

Examiner

Elizabeth M Cole

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 11-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 18-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. Claims 5, 22-24, 27, rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, the limitation that the “magnetic article has an aesthetically pleasing drape and a tactile handle” renders the claim vague and indefinite because it is not clear how the article was evaluated, i.e., what standards were employed, etc.

In claim 22, the limitation that the method of making the article comprises the step of sewing the fabric to hold a desired shape is already present in independent claim 18.

In claim 23, the step of wearing the magnetic article does not seem to be a method of making limitation.

In claim 24, the step of “laying on said magnetic article” can not be understood. Is the magnetic article being applied to something? This does not appear to be a method of making limitation.

In claim 27, it is not clear what an “integral layer” is.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 1, 3-6, 18-22, 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 06-108,309, (machine translation attached). JP '309 discloses a fabric comprising magnetic fibers. The magnetic fibers may have a sheath/core structure wherein the core comprises a polymeric material having magnetic particles, (designated as B in the figure), disposed therein and the sheath comprises the polymeric material, ( designated as A in the figure). The magnetic fibers may be formed into woven, knitted and nonwoven fabrics. See paragraphs 0006, 0023 - 0027. JP '309 differs from the claimed invention because it does not disclose stitching the fabric. However, JP '309 teaches that the magnetic fiber containing fabrics may be formed into bedding. It is conventional to stitch bedding in order to hem it, etc. Therefore, it would have been obvious to have stitched the magnetic fabric disclosed by JP '309 since stitching and sewing are completely conventional methods of shaping and securing fabrics, especially fabrics which are used in bedding, such as sheets, bedspreads, etc.
4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 as applied to claims 1, 3-6, 18-22, above, and further in view of Ishino et al, U.S. Patent No. 4,515,850. JP '309 does not teach employing a slit film fiber containing magnetic powder to form a magnetic fabric. Ishino et al teaches that magnetic fibers may be formed from films which comprise magnetic powder which are slit into thin ribbons and woven into fabrics. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed slit film fibers in the fabric of JP '309. One of ordinary skill in the art would have been

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motivated to employ slit film fibers because Ishino et al teaches that magnetic slit film fibers are alternative, known magnetic fibers.

5. Claims 7-9, 23-27, 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 as applied to claims 1, 3-6, 18-22, above, and further in view of Miyaguchi, U.S. Patent No. 5,882,292. JP '309 does not teach coating or printing an additional layer of magnetic material onto the fabric and does not specifically teach wearing or "laying on" the magnetic fabric.

Miyaguchi discloses that magnetic materials may be printed or coated on to fabrics. Miyaguchi discloses that printing or coating the magnetic material allows it to be placed in particular patterns or configurations corresponding to particular part of the person who will be wearing garments or patches formed from the coated fabric. See col. 2, lines 39-47. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further applied the magnetic coating as taught by Miyaguchi to the fabric disclosed by JP '309. One of ordinary skill in the art would have been motivated to have printed or coated the fabric of JP '309 with an additional magnetic layer in order to amplify the magnetic properties in certain regions of the fabric.

6. Claims 10, 28-29 rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 in view of Miyaguchi as applied to claims 7-9, 23-27, 35-36 above, and further in view of NL 83-1728 to Visscher. JP '309 does not teach further incorporating a magnet into the fabric. Visscher teaches that magnets can be incorporated into fabrics in order to provide magnetic therapy to a particular part of a persons skin. Therefore, it would have been obvious to have sewn a magnet

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on to or between layers of the fabric of JP '309. One of ordinary skill in the art would have been motivated to have sewn a magnet on to the JP '309 fabric in order to further enhance the magnetic therapy which can be applied at a particular point of a person's skin.

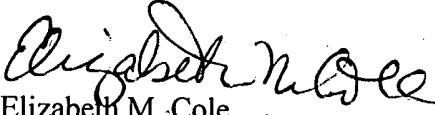
7. Applicant's amendment of 1/11/02 has been entered. The restriction requirement is withdrawn in view of the amendments with regard to claims 18-29. With regard to claims 11-17, although Applicant indicates in the remarks that these claims have been canceled, the amendment did not include instructions to cancel these claims. Therefore, claims 11-17 stand withdrawn from consideration.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.

  
Elizabeth M. Cole  
Primary Examiner  
Art Unit 1771

e.m.c

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April 8, 2003